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March 17, 2012

Hon. Arthur D. Spatt,
United States District Judge
United States District Court
Eastern District of New York,
Long Island Courthouse,
100 Federal Plaza
Central Islip, NY 11722-4438

Re: Genometrica Research Inc., v. Boris Gorbvitski, Vera Gorbvitski
a/k/a Vera Gorfinkel, and Advanced Biomedical Machines, Inc.
USDC:EDNY Case Cv-11-5802 (ADS)(AKT)

Dear Judge Spatt:

This will serve as defendant's opposition to the letter Application of the plaintiffs for a further extension, duplicative of an Application previously requested and denied in writing by Your Honor with the clear notation that no further applications for an extension would be granted.

Relevant Background

Respective Counsel appeared for Joint Pretrial Procedures before Magistrate Judge Tomlinson on March 9th. Plaintiff's accelerated Discovery Demands were authorized by the Magistrate Judge to permit plaintiff to oppose the motion to dismiss under Fed. R. Civ. P. 12(b) (6); they have been received and will be timely and completely responded to by counsel within the deadlines provided by Judge Tomlinson on March 9th.

It can be concluded, that both sides appeared before Magistrate Tomlinson to complete all procedures to allow Plaintiff to oppose a pending motion to dismiss under Fed. R. Civ. P. 12(b) (6). Rather than comply with Magistrate Tomlinson's May 9th Scheduling Order, plaintiffs' counsel writes Judge Spatt once again for an extension knowing the same request was previously denied and clearly duplicative of the prior Application.

Argument

It is abundantly clear that plaintiff does not wish to deal with the core issue raised in the Fed. R. Civ. P. 12(b) (6) dismissal motion that the Court lacks subject matter jurisdiction of the claims asserted. Of the sixteen (16) claims, thirteen are clearly enumerated (4th through 16th) by plaintiff as nonfederal and solely state based. The three remaining, the First, Second and Third Claims allege Trade Mark Violations, when in fact no evidence is presented in the complaint of the existence of any alleged trade-marks. .

Hon. Arthur D. Spatt,
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Conclusion

Both parties appeared for Joint Pretrial Procedures before Magistrate Judge Tomlinson on March 9th.

Plaintiff sought and obtained from Judge Tomlinson on March 9th permission to serve "Accelerated Discovery Demands" to oppose the motion to dismiss under Fed. R. Civ. P. 12(b) (6). Plaintiff served those "Accelerated Discovery Demands". They will be timely and completely responded to by defendants' counsel within the deadlines provided by Judge Tomlinson on March 9th.

Seeking a second extension after the March 9th's extensive Discovery Hearing, after the request and granting to plaintiff of an "Accelerated Discovery Demands" to oppose the motion to dismiss under Fed. R. Civ. P. 12(b) (6) is a tacit admission that plaintiff did not proceed in good faith before Magistrate Judge on March 9th.

Seeking to by pass opposing the motion to dismiss under Fed. R. Civ. P. 12(b) (6) is a further admission that this complaint as pleaded and when filed in December, 2011 should not have been brought in federal court in the first place acknowledging the claims are state based

A request for further delay sought by the plaintiff is highly prejudicial.

Respectfully submitted,



ARTHUR MORRISON,
Attorney for Defendants (AM 5678)

/s/ William V. Rapp,
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February 1, 2012

VIA ECF

Hon. Arthur D. Spatt
United States District Judge
P.O. Box 9014
Central Islip, NY 11722-9014

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ FEB 02 2012 ★

LONG ISLAND OFFICE

Re: GENOMETRICA RESEARCH, INC.
v. GORBOVITSKY, et al.
Case No.: 11-CV-5802(ADS)(AKT)
Our File No.: 7375-G

Honorable Judge Spatt:

We represent Plaintiff Genometrica Research Inc. (hereinafter "Genometrica") in connection with the matter referenced herein above. We write to request a sixty (60)-day extension of time for Genometrica to file its Opposition to Defendants' Motion to Dismiss under Fed. R. Civ. P. 12(b)(6) (Court Doc. No. 7). The requested extension will move Genometrica's deadline to file its opposition papers from February 2, 2012 to April 3, 2012.

This is Genometrica's First Request for a Continuance in connection with Defendants' Motion to Dismiss.

Defendant's Motion raises a number of complex issues. Further, Genometrica's response to the motion may necessitate, among other things, affidavits by Genometrica's officers, who are currently outside the United States, and an Amended Complaint. The Amended Complaint itself will likely contain new complex issues, additional facts, and additional causes of action. While we have already begun discussions with Genometrica's officers regarding many of the issues that Defendants raised in their motion, we will be unable to finalize any affidavits, or come to an understanding about additional causes of action, until Genometrica's officers are back in the United States. We expect that Genometrica's officers, who are foreign nationals, will arrive back in the United States, some time within the next 30 days.

Pursuant to the Fed. Rules of Civil Procedure, the Local Rules of the Eastern District of New York and your Honor's Individual Rules, we have been discussing all of the foregoing with Defendants' counsel Mr. Rapp and Mr. Morrison since January 24, 2012. Annexed hereto are copies of e-mails we have exchanged with counsel together with our proposed stipulation for the continuance. Notwithstanding our numerous attempts, the most recent of which was earlier today,

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THE LAW OFFICES OF P.B. TUFARIELLO, P.C.

Hon. Arthur D. Spatt

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February 1, 2012

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Defendants continue to refuse, without reason, the requested professional courtesy of an extension. Their continued refusal has necessitated this letter request.

We respectfully ask that the Court grant this request for an extension.

Your Honor's patience and professional courtesies are greatly appreciated.

Respectfully submitted,


Panagiota Betty Tufariello

PBT:ic

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The plaintiff's request for an extension to file its opposition to the defendants' motion to dismiss is granted until April 2, 2012. No further extensions will be granted. So Ordered.

151 ARTHUR D. SPATT

Arthur D. Spatt, U.S.D.J.
MOVANT'S COUNSEL IS DIRECTED TO SERVE A
COPY OF THIS ORDER ON ALL PARTIES UPON
RECEIPT VIA FACSIMILE. 2/2/12

Service List annexed

MAGISTRATE JUDGE

A. KATHLEEN TOMLINSON

100 Federal Plaza, Courtroom 910

Central Islip, NY 11722-9014

Chambers: (631) 712-5760 Fax: (631) 712-5766

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TRANSMISSION VERIFICATION REPORT

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